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PATENT

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants: **Michal MORCINIEC, et al.**) Examiner: Matthew S. GART
Serial No.: **10/698,849**) Art Unit: 3625
Filed: October 31, 2003) Our Ref: B-5283 621316-4
For: "MAKING PURCHASE DECISIONS") 300202209-2US
Date: March 12, 2007
Re: ***Appeal to the Board of Appeals***

BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the Final rejection dated October 10, 2006, for the above identified patent application. Please charge the amount of \$500.00 for the fee set forth in 37 C.F.R. 1.17(c) to existing deposit account no. 08-2025 for submitting this Brief. Appellants submit that this Appeal Brief is being timely filed because the Notice of Appeal was filed on January 10, 2007.

REAL PARTY IN INTEREST

The real party in interest to the present application is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

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RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences related to the present application.

STATUS OF CLAIMS

Claims 1-15, 17 and 19-27 are the subject of this Appeal and are reproduced in the accompanying appendix. Claims 16 and 18 have been canceled without prejudice.

STATUS OF AMENDMENTS

No Amendment After Final Rejection has been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The invention described and claimed in claim 1 is directed to an apparatus for use in making a purchase decision regarding purchase of a plurality of units of a good or service at a particular purchasing time from a plurality of potential suppliers, the apparatus comprising means (1) for determining or otherwise obtaining a total quantity (501, 700) of units of said good or service required to be purchased at said purchasing time as defined by one or more purchase orders (30) relating to said purchasing time (p. 7 l. 8 – p. 9 l. 7), means for accessing details of terms under which said good or service may be purchased from each of said potential suppliers at said purchasing time (p. 9 ll. 9-20), and means (70, 703) for providing an indication (704) of one or more consequences of allocating portions of said total quantity to be purchased among said plurality of potential suppliers (p. 9 l. 21 – p. 13 l. 25, Figs. 1 - 4).

The invention described and claimed in claim 17 is directed to a method for use in making a purchase decision regarding purchase of a plurality of units of a good or service at a particular purchasing time from a plurality of potential suppliers, the method comprising the steps of determining or obtaining a total quantity (501, 700) of units of said good or service required to be purchased at said purchasing time as defined by one or more purchase orders (30) relating to said purchasing time (p. 7 l. 8 – p. 9 l. 7), accessing details of terms under which said good or service may be purchased from each of said potential suppliers at said purchasing time (p. 9 ll. 9-20) and providing an indication (704) of one or more consequences of allocating

portions of said total quantity to be purchased among said plurality of potential suppliers (p. 9 l. 21 – p. 13 l. 25, Figs. 1 - 4).

The invention described and claimed in claim 19 is directed to an apparatus for use in making a purchase decision regarding purchase of a plurality of units of a good or service at a particular purchasing time from a plurality of potential suppliers, the apparatus comprising an input for receiving details of one or more purchase orders (30) generated in respect of said purchasing time (p. 7 l. 8 – p. 9 l. 7), and for receiving details of contracts relating to purchase of said good or service (p. 9 ll. 9-20), at least one contract being defined in respect of each of said plurality of potential suppliers, said apparatus being arranged to define a link between said purchase orders and related contracts (p. 9 l. 21 – p. 13 l. 25, Figs. 1 - 4).

The invention described and claimed in claim 20 is directed to an apparatus for use in making a purchase decision regarding purchase of a plurality of units of a good or service at a current purchasing time from a plurality of potential suppliers, the apparatus comprising an input for receiving details of one or more purchase orders (30) generated in respect of each of a plurality of previous purchasing times (p. 7 l. 8 – p. 9 l. 7), and for receiving details of contracts relating to purchase of said good or service (p. 9 ll. 9-20), at least one contract being defined in respect of each of said plurality of potential suppliers, and a processor for determining from said details of said one or more purchase orders a total quantity of said good or service purchased in respect of each of said contracts at said previous purchasing times and for updating said total quantities in respect of each of said contracts according to an allocation among said plurality of potential suppliers of a quantity of said good or service purchased at said current purchasing time (p. 9 l. 21 – p. 13 l. 25, Figs. 1 - 4).

The invention described and claimed in claim 21 is directed to an apparatus for use in making a purchase decision regarding purchase of a plurality of units of a good or service from a plurality of potential suppliers at each of a plurality of purchasing times within a predetermined period, the apparatus comprising means for receiving data representative of a total quantity (501, 700) of units of said good or service required to be purchased at each of said purchasing times (p. 7 l. 8 – p. 9 l. 7), means for accessing details of terms under which said good or service may be purchased from each of said potential suppliers at said purchasing times (p. 9 ll. 9-20), means (70, 703) for determining an optimal purchase decision regarding purchase of said plurality of

units of said good or service based on a total quantity of units required to be purchased within said predetermined period and said terms, said optimal purchase decision being defined in terms of allocation among said plurality of potential suppliers of said total quantity of said good or service required to be purchased at each of said purchasing times so as to minimise a total cost of purchasing said good or service during said predetermined period (p. 9 l. 21 – p. 13 l. 25, Figs. 1-4).

The invention described and claimed in claim 27 is directed to a method for use in making a purchase decision regarding purchase of a plurality of units of a good or service from a plurality of potential suppliers at each of a plurality of purchasing times within a predetermined period, the method comprising the steps of receiving data representative of a total quantity (501, 700) of units of said good or service required to be purchased at each of said purchasing times (p. 7 l. 8 – p. 9 l. 7), accessing details of terms under which said good or service may be purchased from each of said potential suppliers at said purchasing times (p. 9 ll. 9-20), and determining an optimal purchase decision regarding purchase of said plurality of units of said good or service based on a total quantity of units required to be purchased within said predetermined period and said terms, said optimal purchase decision being defined in terms of allocation among said plurality of potential suppliers of said total quantity of said good or service required to be purchased at each of said purchasing times so as to minimise a total cost of purchasing said good or service during said predetermined period (p. 9 l. 21 – p. 13 l. 25, Figs. 1 - 4).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Issue 1: Whether claims 1-15, 17 and 19-27 are patentable under 35 U.S.C. 102(e) over U.S. Patent Application Publication No. 2004/0010463 to Hahn-Carlson (hereinafter “Hahn”).

THE ARGUMENT

Issue 1: Whether claims 1-15, 17 and 19-27 are patentable under 35 U.S.C. 102(e) over U.S. Patent Application Publication No. 2004/0010463 to Hahn-Carlson (hereinafter “Hahn”).

On page 3 of the Office Action of October 10, 2006, the Examiner rejects claims 1-15, 17 and 19-27 under 35 U.S.C. 102(e) as being unpatentable over Hahn. In particular, the Examiner

finds that, with regard to the independent claims, Hahn discloses all of the claimed limitations. Appellants respectfully disagree.

In their previous submission, Appellants noted that the present independent claims recite, *inter alia*, means for providing an indication of one or more consequences of allocating portions of a total quantity to be purchased among a plurality of potential suppliers. The Examiner continues to assert that this is disclosed by Hahn at least at paragraph 50, citing specifically to the proposition that "The pricing rules may also include, for example, prices associated with a particular quantity of products, with different per-product prices being assigned for particular quantities of products." This, however, simply has nothing in common with the claimed indicating of one or more consequences of allocating portions of a total quantity to be purchased among a plurality of potential suppliers.

As Appellants previously explained, Hahn discloses a system (the CCM, or Collaborative Contract Manager) that is intended to be an interface between a buyer system and a seller system and to determine pricing for a contract based upon both the buyer's and the seller's criteria. Thus, it is important at the outset to understand that Hahn is aimed at facilitating a transaction between a single buyer and a single seller. Appellants' invention, on the other hand, is aimed at helping a buyer to allocate a purchase among a plurality of sellers. It is true that the CCM of Hahn does access the criteria (pricing, discounts, etc.) of a plurality of sellers; however, it only does so in order to pick the single best one in accordance with the buyer's criteria. This is best set forth in paragraph 53 of Hahn:

...the CCM 210 is further adapted to search for contracts for a particular item offered by different sellers and to identify prices for purchase of the item by a particular buyer. For instance, when a buyer requests a particular product at the best price from the CCM 210, a search is performed using the buyer's information and seller information to identify eligible contracts (e.g., the seller and buyer meet each other's criteria for establishing a contract). Once eligible contracts are identified and pricing for execution of the contracts for

the particular item (and other transaction information, such as quantity and delivery options) have been determined, a contract with the lowest price is selected and implemented. With this approach, a buyer can automatically have a lowest-price eligible contract identified and implemented for purchasing products.

Appellants' invention (as best understood with reference to Fig. 2 of the specification) is aimed at providing the user with an understanding of how spreading a purchase order amongst several suppliers will impact the overall picture (e.g., total price) by allowing the user to vary the allocation among the suppliers and providing an indication to the user of the consequences (e.g. how the total price varies) of so varying the allocation. There is nothing akin to this in Hahn. Hahn does accept purchasing criteria from a buyer and then searches through all available supplier contracts for those contract that can meet the buyer's criteria. However, at no point does Hahn even mention the possibility of the buyer being able to select a plurality of sellers amongst which to distribute his intended purchase, much less of allowing the buyer to play with the distribution of his purchase order among such a plurality of sellers in order to see the effect (consequences) of any particular allocation.

In their previous submission, Appellants respectfully invited the Examiner to peruse the entire specification of Hahn to verify that all embodiments disclosed therein are dedicated to setting up a one-on-one relationship between a single buyer and a single seller. In the Advisory Action of December 27, 2007, the Examiner alleges to answer the above by offering that

The request for reconsideration is not persuasive. The attorney argues that Hahn is not a proper prior art reference. The Examiner notes, Provisional Application No. 60/379,561 does provide adequate 35 USC 112 first paragraph support for Patent Application Publication US2004/0010463A1 and therefore qualifies US2004/0010463A1 as prior art.

With all due respect, the above could not possibly make less sense. There is nothing in any of Appellants' submissions that is even vaguely reminiscent of an argument that Hahn suffers from a ¶112 shortcoming, and Appellants are completely befuddled by the Examiner's

statement. Appellants have, as noted above, argued that Hahn does not disclose certain claimed limitations; if it is this argument that the Examiner is attempting to answer with the above, alleging that the priority document of the reference provides “adequate 35 USC 112 first paragraph support”, it is completely irrelevant and in fact nonresponsive.

However, this does not seem to be the case as the Examiner continues:

The applicant further argues the differences between the intended use of the instant application and the Hahn reference. The Examiner notes, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended sue, then it meets the claim.

The above leads Appellants to wonder if the Examiner is even reading the same case – which they cannot ascertain as the Examiner wastes not one single word in trying to draw a connection, however feeble, between his random quotation from the MPEP regarding intended use of an invention and the actual limitations of the instant claims as set forth in Appellants’ previous submission.

Erstwhile, the Examiner’s allegation that “applicant further argues the differences between the intended use of the instant application and the Hahn reference” is a complete falsehood. What Appellants did in fact argue is that Hahn fails to disclose the claimed means for providing an indication of one or more consequences of allocating portions of a total quantity to be purchased among a plurality of potential suppliers. In a good-faith attempt to assist the Examiner on the path toward understanding, Appellants further and graciously provided an explanation wherein – in order to make the process of understanding as painless as possible for the Examiner – they outlined the differences between what their invention does and what the system of the prior art does, pointed out that the two accomplish different tasks, and explained that this is why one is not in fact anticipatory of the other. As painfully clear in view of the Advisory Action, the Examiner blithely ignored the claimed limitations missing from Hahn and

decided – for no reason set forth in the Advisory Action or readily discernible in the light of common sense – to attack Appellants' helpful explanation as "arguing the intended use."

Appellants thus appeal to the Board to kindly consider their earlier argument that Hahn does not in fact disclose, mention, or allude to the possibility of a buyer being able to select a plurality of sellers amongst which to distribute his intended purchase nor of allowing the buyer to vary the distribution of his purchase order among such a plurality of sellers in order to see the effect (consequences) of any particular allocation, to overturn all of the Examiner's rejections on appeal, and to pass this case to early allowance with all currently pending claims and without any further frittering away of Appellants' period of protection.

CONCLUSION

In view of the extensive reasons advanced above, Appellant respectfully contends that each pending claim is in fact novel and patentable. Therefore, reversal of all rejections and objections and re-opening of the prosecution is hereby respectfully solicited.


I hereby certify that this correspondence is being deposited with the United States Post Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

March 12, 2007

(Date of Transmission)

Diane Osollo

(Name of Person Transmitting)

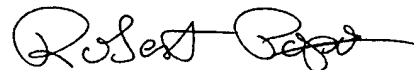

(Signature)

March 12, 2007

(Date)

Attachments

Respectfully submitted,



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Claims

1. Apparatus for use in making a purchase decision regarding purchase of a plurality of units of a good or service at a particular purchasing time from a plurality of potential suppliers, the apparatus comprising means for determining or otherwise obtaining a total quantity of units of said good or service required to be purchased at said purchasing time as defined by one or more purchase orders relating to said purchasing time, means for accessing details of terms under which said good or service may be purchased from each of said potential suppliers at said purchasing time, and means for providing an indication of one or more consequences of allocating portions of said total quantity to be purchased among said plurality of potential suppliers.
2. Apparatus according to claim 1, wherein said terms are defined in contracts, with at least one contract being established in respect of each of said potential suppliers.
3. Apparatus according to claim 2, including a contract repository 200 in which details of each contract established in respect of said suppliers are stored.
4. Apparatus according to claim 3, wherein each contract is encoded prior to storage.
5. Apparatus according to claim 4, wherein each contract is encoded as a record prior to storage, each record including one or more of a unique contract identifier, a start date and an end date of the contract, a good type, and a delivery location.
6. Apparatus according to claim 5, wherein said terms are included in said encoded contract record.

7. Apparatus according to claim 6, wherein said terms include a volume discount expressed as a discount function, defining a discount as a function of a quantity of said good or service.
8. Apparatus according to claim 1, including means for storing details of said one or more purchase orders.
9. Apparatus according to claim 8, wherein the or each purchase order is encoded prior to storage thereof.
10. Apparatus according to claim 9, wherein each purchase order is encoded in terms of one or more of an order due date, a good type, a quantity of the good specified in the purchase order, and a buyer location.
11. Apparatus according to claim 1, including a linking table for recording links between contracts and purchase orders.
12. Apparatus according to claim 11, in which an aggregated quantity of goods or services purchased in respect of each contract is stored in said linking table.
13. Apparatus according to claim 1, including a procurement decision interface which provides a visual indication of said consequences.

14. Apparatus according to claim 13, wherein said procurement decision interface provides an indication of an average price per unit of a good required to be purchased, given that the total quantity of goods required at a specific purchasing time is allocated between a selected set of contracts in quantities prescribed by a user.

15. Apparatus according to claim 1, including a data structure for storing a repository of demand schedules.

16. (canceled)

17. A method for use in making a purchase decision regarding purchase of a plurality of units of a good or service at a particular purchasing time from a plurality of potential suppliers, the method comprising the steps of determining or obtaining a total quantity of units of said good or service required to be purchased at said purchasing time as defined by one or more purchase orders relating to said purchasing time, accessing details of terms under which said good or service may be purchased from each of said potential suppliers at said purchasing time and providing an indication of one or more consequences of allocating portions of said total quantity to be purchased among said plurality of potential suppliers.

18. (canceled)

19. Apparatus for use in making a purchase decision regarding purchase of a plurality of units of a good or service at a particular purchasing time from a plurality of potential suppliers, the apparatus comprising an input for receiving details of one or more purchase orders generated in respect of said purchasing time, and for receiving details of contracts relating to purchase of said good or service, at

least one contract being defined in respect of each of said plurality of potential suppliers, said apparatus being arranged to define a link between said purchase orders and related contracts.

20. Apparatus for use in making a purchase decision regarding purchase of a plurality of units of a good or service at a current purchasing time from a plurality of potential suppliers, the apparatus comprising an input for receiving details of one or more purchase orders generated in respect of each of a plurality of previous purchasing times, and for receiving details of contracts relating to purchase of said good or service, at least one contract being defined in respect of each of said plurality of potential suppliers, and a processor for determining from said details of said one or more purchase orders a total quantity of said good or service purchased in respect of each of said contracts at said previous purchasing times and for updating said total quantities in respect of each of said contracts according to an allocation among said plurality of potential suppliers of a quantity of said good or service purchased at said current purchasing time.

21. Apparatus for use in making a purchase decision regarding purchase of a plurality of units of a good or service from a plurality of potential suppliers at each of a plurality of purchasing times within a predetermined period, the apparatus comprising means for receiving data representative of a total quantity of units of said good or service required to be purchased at each of said purchasing times, means for accessing details of terms under which said good or service may be purchased from each of said potential suppliers at said purchasing times, means for determining an optimal purchase decision regarding purchase of said plurality of units of said good or service based on a total quantity of units required to be purchased within said predetermined period and said terms, said optimal purchase decision being defined in terms of allocation among said plurality of potential suppliers of said total quantity of said good or service required to be purchased at each of said purchasing times so as to minimise a total cost of purchasing said good or service during said predetermined period.

22. Apparatus according to claim 21, wherein said terms include cumulative purchase discounts

within said predetermined period.

23. Apparatus according to claim 21, wherein constraints are applied in respect of purchases from one or more of said suppliers.

24. Apparatus according to claim 21, wherein said terms are defined in respective contracts, at least one contract being defined for each of said potential suppliers.

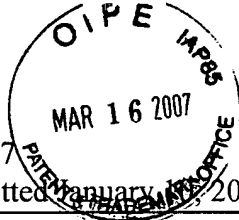
25. Apparatus according to claim 24, arranged to perform a search of possible allocations of purchases to respective contracts.

26. Apparatus according to claim 25, wherein the possible allocations are corner cases.

27. A method for use in making a purchase decision regarding purchase of a plurality of units of a good or service from a plurality of potential suppliers at each of a plurality of purchasing times within a predetermined period, the method comprising the steps of receiving data representative of a total quantity of units of said good or service required to be purchased at each of said purchasing times, accessing details of terms under which said good or service may be purchased from each of said potential suppliers at said purchasing times, and determining an optimal purchase decision regarding purchase of said plurality of units of said good or service based on a total quantity of units required to be purchased within said predetermined period and said terms, said optimal purchase decision being defined in terms of allocation among said plurality of potential suppliers of said total quantity of said good or service required to be purchased at each of said purchasing times so as to minimise a total cost of purchasing said good or service during said predetermined period.

U. S. Appln. No. 10/698,849

Brief on Appeal dated March 12, 2007
In support of Notice of Appeal submitted January 12, 2007



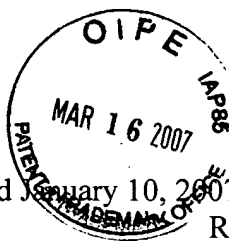
Evidence Appendix Page B-1

There is no evidence submitted with the present Brief on Appeal.

U. S. Appln. No. 10/698,849

Brief on Appeal dated March 12, 2007

In support of Notice of Appeal submitted January 10, 2007



Related Proceedings Appendix Page C-1

There are no other appeals or interferences related to the present application.